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Immigration as a Human Right¹

Immigration restrictions curtail freedom. They prevent people from going where they want to go, seeing whom they wish to see and taking jobs they wish to take. When repressive states enact such restrictions internally, preventing their residents from moving, associating or working freely within their borders, they face condemnation by governments, international organizations and human rights advocates. Yet the legitimacy of immigration restrictions, which are enforced by almost all states, is widely taken for granted.

This article argues that people have a human right to immigrate to other states. People have essential interests in being able to make important personal decisions and engage in politics without state restrictions on the personal and political options available to them. It is these interests that other human rights, such as the human rights to internal freedom of movement, freedom of association and freedom of occupational choice, protect. Commitment to these already recognized human rights thus requires commitment to the further human right to

¹ Versions of this chapter have been presented to audiences in Oxford, Berlin, Keele and Stanford. I am extremely grateful for the comments I received. Special thanks are owed to Danial Butt, Eamonn Callan, Simon Caney, Joseph Carens, Sarah Fine, Matthew Gibney, David Miller, Tiziana Torresi, Leif Wenar and Lea Ypi.

immigrate, for without this further right the underlying interests are not sufficiently protected.²

Does this mean immigration restrictions are always unjust? On the view of human rights adopted here, human rights are not absolute. Restrictions might be justified in extreme circumstances in which immigration threatens severe social costs that cannot otherwise be prevented. Outside these circumstances, however, immigration restrictions are unjust. The idea of a human right to immigrate is not then a demand for open borders.³ Rather it is a demand that basic liberties (to move, associate, speak, worship, work and marry) be awarded the same level of protection when people seek to exercise them across borders as when people seek to exercise them within borders. Immigration restrictions deserve no special exemption from the purview of human freedom rights.⁴

² While a number of authors have suggested that immigration restrictions are morally inconsistent with conventional human rights the idea of a human right to immigrate has not been sufficiently developed or defended. This article addresses that shortfall in the literature, offering an account of what the right does (and does not) entail and the fundamental interests underlying it. For these related arguments see Steven Burr, "Immigration and the First Amendment," *California Law Review* 73 (1985): 1889-1928; Joseph H. Carens, "Migration and Morality: A Liberal Egalitarian Perspective," in *Free Movement: Ethical Issues in the Transnational Migration of People and Money*, eds. Brian Barry and Robert E. Goodin (University Park: Pennsylvania State University Press, 1992); Phillip Cole, *Philosophies of Exclusion* (Edinburgh: Edinburgh University Press, 2000); Ann Dummett, "The Transnational Migration of People Seen From within a Natural Law Tradition," in *Free movement: Ethical Issues in the Transnational Migration of People and of Money*, eds. Brian Barry and Robert E. Goodin (University Park, PA: Pennsylvania State University Press, 1992); Robert E. Goodin, "If People Were Money..." in *Free movement: Ethical Issues in the Transnational Migration of People and of Money*, eds. Brian Barry and Robert E. Goodin (University Park, PA: Pennsylvania State University Press, 1992); Hillel Steiner, "Hard Borders, Compensation, and Classical Liberalism," in *Boundaries, Autonomy and Justice: Diverse Ethical Views*, ed. David Miller and Sohail H. Hashimi (Princeton: Princeton University Press, 2001).

³ The open borders slogan is adopted by Joseph H. Carens, "Aliens and Citizens: The Case for Open Borders," *Review of Politics* 49 (1987): 250-73 although even Carens does not defend the absolutist stance that the slogan suggests. Carens has since described his position as supporting "open borders as an ideal" (Joseph H. Carens, "The Philosopher and the Policy Maker: Two Perspectives on the Ethics of Immigration with Special Attention to the Problem of Restricting Asylum," in *Immigration Admissions: The Search for Workable Policies in Germany and the United States*, eds. Kay Hailbronner, David A. Martin and Hiroshi Motomura (Providence RI: Oxford: Berghahn, 1997), 7). But if "open borders" is too strong a description of the non-absolutist, pro-free-movement position, "open borders as an ideal" is too weak. Something can be an ideal without entailing stringent duties upon anyone to bring that ideal about. For these reasons I think the language of human rights is preferable to that of "open borders".

⁴ This freedom argument for a human right to immigrate can be distinguished from an argument from poverty that holds that rich countries have a duty to admit immigrants as a means to address

Section I defines more specifically the idea of a human right to immigrate that the article defends. Section II introduces the core argument for this right, identifying the two main interests at stake. Section III develops the argument by defending the claim that people are entitled to access options that lie beyond a supposedly “adequate” range, accessible within their own state. Section IV turns to the objection that states have a right to exclude foreigners from their territory. Section V demonstrates that, contrary to what some have argued, states cannot claim a right to restrict immigration on the basis of such values as sovereignty, democracy and self-determination. Sections VI and VII concedes that states may have a right to exclude where immigration to threaten severe costs but argues that a contingent right of this sort is compatible with the idea of a human right to immigrate. Section VIII concludes.

I

Before presenting my argument for a human right to immigrate, let me first define the right that I shall argue for. It has five important features. First, it is a moral, rather than a legal, human right. Moral human rights set out what people are morally entitled to. Legal human rights are those recognized in law.⁵ No current legal human rights document includes a human right to immigrate. There may be a case for enacting such a right into law but that case is not made here.

global poverty. Given the enormous suffering that global poverty causes, the poverty argument may seem the more compelling of the two. Closer inspection, however, reveals that the poverty argument is flawed in a number of respects. See Kieran Oberman, “Immigration, Global Poverty and the Right to Stay”, *Political Studies* 59 (2011): 253-268.

⁵ For the difference between moral and legal rights see Thomas Pogge, “Severe Poverty as a Human Rights Violation,” in *Freedom from Poverty as a Human Right: Who Owes what to the Very Poor?*, ed. Thomas Pogge (Cambridge: Cambridge University Press, 2007), 13.

Second, I shall assume an interest account of moral human rights according to which these rights “are grounded in universal interests significant enough to generate duties on the part of others”.⁶ To prove that there is a moral human right to immigrate I must therefore show that people have significant enough interests in the freedom to immigrate to generate duties on the part of others to uphold this freedom. The duties the right generates include, most obviously, the duty upon states not to prevent people from entering or residing within their territory. However, as I shall argue in section VI, the right may also generate further duties, for instance a duty to create the conditions under which foreigners can be admitted without severe cost.

Third, the human right to immigrate I wish to defend can justify at least some forms of interference by external actors, such as foreign governments and international organizations, against states that violate the right. This point is important since, on some accounts of human rights, it is part of the very definition of a human right that the right’s violation by a state justifies some kind of interference by outsiders.⁷ ‘Interference’ may be defined broadly so as to encompass a wide range of measures, from public criticism and diplomatic pressure to military intervention.⁸ I will not attempt to specify precisely what kind of interference is appropriate when the human right to immigrate is violated.

⁶ John Tasioulas, “The Moral Reality of Human Rights,” in *Freedom from Poverty as a Human Right: Who Owes what to the Very Poor?*, ed. Thomas Pogge (Cambridge: Cambridge University Press, 2007), 77.

⁷ For accounts of this sort see Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009); John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999).

⁸ Beitz, *The Idea of Human Rights*, 31-40. In defining interference broadly, Beitz distinguishes his account from Rawls. On Rawls’ account it is part of the definition of human rights that they justify “forceful intervention”, the plainest example of which is military intervention (Rawls, *The Law of Peoples*, 80). This may explain why Rawls’ list of human rights is so restricted; missing many of the rights included in the UDHR and other human rights documents (ibid., 65). As Beitz account makes plain, one can accept Rawls’ definitional tie between human rights and interference, but arrive at a more conventional list of human rights, if one interprets interference more broadly.

Violations can vary in form and degrees. What constitutes an appropriate response will likely depend on the circumstances of the case. All I shall seek to show is that violations of the human right to immigrate can justify at least some forms of interference by external actors.

Fourth, as I have already indicated, the human right to immigrate, like other moral human rights, is a non-absolute right. In this sense it is exactly like other human rights. Sometimes, for the sake of competing moral values, a human right can justifiably be curtailed. As James Griffin has put it, human rights are “resistant to trade-offs but not too resistant”.⁹ If the costs of immigration are particularly severe, restrictions might be justified. This point will prove important when we turn to protection arguments in section V, that is, arguments that seek to justify immigration restrictions as a means to protect certain values.

Fifth, the human right to immigrate is a right people have to enter and reside in foreign states as long as they like. It thus includes the right to visit a foreign state for a short period of time, as well as the right to permanently reside there. However the right does not in itself entail a right to citizenship in the state in which one resides. While a strong argument can be made for awarding citizenship to long-term residents it is a further argument to the one made here.

Having offered this description of the human right to immigrate let me emphasize three key claims that the idea encompasses. These are (1) that people have significant interests in the freedom to immigrate, (2) that these interests generate duties upon states to uphold the freedom to immigrate and (3) the violation of those duties to uphold the freedom to immigrate can justify interference by external actors. Let us term these claims, (1) the interest claim, (2) the duty claim

⁹James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008), 77.

and the (3) the interference claim. The purpose of this article is to defend all three claims and thereby defend the idea of a human right to immigrate. We shall start with the interest claim.

II

The human right to immigrate is grounded on interests that already recognized human freedom rights protect. By “human freedom rights” I mean the sorts of rights to basic freedoms that are found in a range of international human rights documents. The Universal Declaration of Human Rights (1948), for instance, lists rights to internal freedom of movement (Article 13.1), freedom of religion (Article 18), freedom of expression (Article 19), freedom of association (Article 20), freedom of occupational choice (Article 23.1) and the freedom to marry (Article 16). The first of these rights is, in a sense, the one most closely related to the human right to immigrate that I shall argue for. Article 13.1 holds that “[e]veryone has the right to freedom of movement and residence within the borders of each state”. The right protects people against the internal application of the sort of restrictions that immigration restrictions represent: restrictions on where people live, work and travel. Such internal restrictions were enforced in Soviet Russia and Apartheid South Africa and are still enforced in a number of repressive states today.

Let me first explain how the human right to immigrate follows from the human right to internal freedom of movement before making the same point in regards to the other human freedom rights listed. Underlying the human right to internal freedom of movement are two interests: one personal, the other political. The personal interest is the interest people have in being free to access the full range of

existing life options when they make important personal decisions. By “life options” I mean those options that give our lives meaning and purpose: friends, family and other associations, expressive opportunities, religions, jobs and marriage partners. If one’s internal freedom of movement is subject to a non-trivial degree of restriction then the range of life options one can access will also be constrained. If the state bans you from entering a region of a country, you are excluded from accessing almost all the life options that exist within it: you cannot visit friends or family, attend a religious or educational institution, express your ideas at a meeting or cultural event, seek employment or pursue a love affair, anywhere within that region.

While the human right to internal freedom of movement protects our interest in being free to access the full range of existing life options, the protection it provides is insufficient since there are many life options that exist beyond the borders of the state in which we reside. As Joseph Carens notes:

Every reason why one might want to move within a state may also be a reason for moving between states. One might want a job; one might fall in love with someone from another country; one might belong to a religion that has few adherents in one’s native state and many in another; one might wish to pursue cultural opportunities that are only available in another land.¹⁰

If human rights are to fully protect our freedom to access the full range of life options then we must have a human right to immigrate to other states.¹¹

¹⁰ Carens, “Migration and Morality: A Liberal Egalitarian Perspective,” 27-28.

¹¹ Note that my argument for a human right to immigrate does not depend on the nature of current immigration policy. As it so happens immigration restrictions routinely prevent people from engaging in the activities referred to above. For instance, people from poor countries are commonly denied tourist visas they need to visit friends and family, attend meetings or participate in religious and cultural activities. (Over a million people, roughly a fifth of all applicants, were denied tourist visas to the US in 2012 (Bureau of Consular Affairs, “NIV Workload by Visa Category FY-2012”, <http://www.travel.state.gov/pdf/FY2012NIVWorkloadbyVisaCategory.pdf> (Accessed: May 5 2013)). Work visas tend only to go to the highly skilled or those in professions with labor shortages. Even family and spousal visas are subject to conditions that make them difficult to obtain for those that qualify and unobtainable for many separated from

The political interest underlying the human right to immigrate and the human right to internal freedom of movement is the interest people have in enjoying a free and effective political process. Free movement is essential for free political activity since one cannot organize in support of a cause by (say) attending a demonstration if one is prevented from getting there. Moreover, since free movement is a condition for free association – one needs to move in order to meet people – it is also a condition for everything that free association makes possible including political dialogue, conflict resolution and the free exchange of ideas. Finally, free movement is necessary for the collection of reliable information regarding political affairs for unless you can go to the effected areas or have someone one trusts go for you, you cannot find out what is happening there. “

These points support the human right to internal freedom of movement but they equally support a right to international freedom of movement. This is true even if we assume the traditional view that people have no rights to democratic inclusion in elections held in foreign countries. For in order to make informed and effective contributions to the democratic process in one’s own country, one must have the freedom to talk to, learn from and cooperate with people living abroad. In a world in which so many problems are international problems and the effects of government policies are felt globally, it is crucial for democracy that citizens of different countries are permitted to interact. It is by interacting that people can gain first hand experience of the effect of their own government’s policies on people living abroad. It is by interacting that people can find out about ideas,

those they love (e.g. in the US visas there are no visas for unmarried couples, same-sex couples and divorced parents who seek regular contact with their children). While these facts heighten the practical importance of a human right to immigrate they are not essential to the argument for the right’s existence. For the existence of a purported human right does not depend on its current violation. Were things otherwise, people living in states in which basic liberties are respected would not have human rights to internal freedom of movement, association, religion and so forth.

policies, and approaches that may be working (or not working) abroad and deserve to be tried (or avoided) at home. And it is through interaction that people can effectively fight for those common causes (climate change, international financial regulation, conflict resolution etc.) that require a transnational solution. The power of governments and corporations transcend borders; ordinary people must not be trapped behind them. Closed borders constrain political activity, restrict the free exchange of ideas and prevent people from acquiring important information with which they can hold their governments to account.¹²

Note that to protect these interests in personal and political freedom people must have the right to reside in a foreign state for as long as they like; a right to visit is not sufficient. A time-restriction on a person's stay restricts the range of options available to them in much the same way as an entry restriction does. This point is clear in the case of long-term life projects, such as romantic relationships and employment opportunities, which typically require more time than temporary visas allow. But the point also stands in the case of short-term activities such as visiting friends or attending a political conference. Temporary visas allow us to engage in such activities but only as long as their validation periods last. As soon as the validation period ends, the activities are once again prohibited. If I wish to meet a friend or attend a conference on Tuesday but face deportation on Monday, then I am denied these options just as surely as I would have been had I been refused entry in the first place. Visas allowing people to stay in a country for a temporary period are no more acceptable than their domestic equivalent: permits

¹² The US Supreme Court made this point in its rejection of emigration restrictions: "America is, of course, sovereign; but sovereignty is woven in an international web that makes her one of the family of nations. The ties with all the continents are close – commercially as well as culturally. Our concerns are planetary, beyond sunrises and sunsets. Citizenship implicates us in those problems and perplexities, as well as in domestic ones. We cannot exercise and enjoy citizenship in world perspective without the right to travel abroad..." (*Aptheker vs. Secretary of State*, 378 U.S. 500 (1964), pp519-521). Also see *Kent vs. Dulles*, 457 U.S. 116 (1958), pp126-127.

allowing people to stay in an area of a country for a temporary period. Both violate underlying interests in personal and political freedom.

There is one final point of analogy to be drawn between the human right to immigrate and the right to internal freedom of movement, which is that the latter, as well as the former, protects the freedom to access options available in foreign states. To see this recall that Article 13.1 of the UDHR requires that everyone be granted “freedom of movement and residence within the borders of *each* state” (emphasis added). In a clarifying document, the UN Human Rights Committee has emphasized that the right is one that “[e]veryone lawfully within a State enjoys”.¹³ Thus the human right to internal freedom of movement, as it is conventionally defined, is not merely a right that citizens can claim against their own states. Rather, anyone that is legally present in a state has a right to free movement within its borders. There is good reason why the conventional right is defined in this way: people have essential interests, both personal and political, in being able to access options available in foreign states. People should be left free to associate with friends, visit religious institutions and attend conferences within the territory of foreign states, as well as their own. But if people have essential interests in being able to access options available in foreign states then they have a right to immigrate to those states for one cannot access internally available options if one is denied access to the territory itself.

I have shown that the interests that ground the human right to internal freedom of movement also ground a human right to immigrate. Let me add that the latter right can equally be derived from the other human freedom rights I have referred to: rights to freedom of expression, association, religion, occupational choice and

¹³ Human Rights Committee, “General Comment No. 27: Freedom of Movement (Article 12),” CCPR/C/21/Rev.1 (1999), para 1.

the right to marry. Immigrations restrictions place a bar between citizens and excluded foreigners. They interfere with the freedom of both to decide for themselves with whom they associate, communicate, worship, study or marry. They cut people off from careers they may wish to pursue, religions they may wish to practice, ideas they may wish to explore and people they may wish to pursue relationships with. Immigration restrictions act, in other words, precisely like those internal restrictions on individual liberty that conventional human freedom rights protect us from. Our set of human freedom rights is incomplete without the human right to immigrate.¹⁴

III

Having sketched the argument for a human right to immigrate let me defend one important aspect of it: the claim that conventional human freedom rights are grounded upon an interest people have in accessing the *full* range of existing life options. Against this claim it could be argued that a smaller range of life options is sufficient to satisfy the essential interests that human rights serve. We might imagine a range large enough to award us a decent choice of occupations, associations, religions and so forth but nevertheless far smaller than the total number of options the world has to offer. If such a range of options is sufficient then the argument for a human right to immigrate collapses. States could offer this smaller range internally and no one would have an essential interest in entering a foreign state to access additional options.¹⁵

¹⁴ For the argument that immigration restrictions violate freedom of association see Steiner, "Hard Borders, Compensation, and Classical Liberalism,". For the argument that US immigration restrictions violate freedom of speech see Burr, "Immigration and the First Amendment,".

¹⁵ David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), Oxford political theory, 205-208.

Let us call this view of human freedom rights the “adequate” range view. The first point that needs to be made regarding this view is that it cannot support conventional human freedom rights. The human right to internal freedom of movement, for instance, is defined by the UDHR as the “right to freedom of movement and residence within the borders of each state”.¹⁶ A proponent of the “adequate” range view must deny that people have this human right. If the human right to freedom of movement only entitled people to an “adequate” range of options then those living in a state with a larger than “adequate” range would lack a human right to freedom of movement across the whole territory of their state. If Belgium offers an adequate range of options and the US offers many times more options than Belgium, then the US offers a range of options many times larger than an adequate range. On the “adequate” range view, the US could divide its territory up into hundreds of Belgium-sized chunks, placing guards and razor wire at the borders of each one, without violating the human right to freedom of movement.

Next consider other human freedom rights to freedom of expression, association, religion, occupational choice and the right to marry. If people only have a human right to the freedom to access an “adequate” range of options then states could radically curtail these freedoms without violating our human rights. Judaism could be banned, without any violation of the human right to freedom of religion, as long as Christianity, Islam, Hinduism and Buddhism went unrepressed. The government could burn books in the town square without any violation of the right to freedom of expression, as long as there was an “adequate” range of books left on the shelves. Public meetings could be shut down and social clubs closed

¹⁶ “The right to move freely relates to the whole territory of a State, including all parts of federal States” (Human Rights Committee, 1999, Human Rights Committee, “General Comment No. 27: Freedom of Movement (Article 12),” para. 5).

without any violation of the human right to freedom of association, as long as there were a sufficient number of other meetings and clubs to which one might go.

Still, it is worth asking what precisely is wrong with the “adequate” range view? What essential interest do people have in accessing options beyond an “adequate” range? In answering these questions it is helpful to draw a distinction between two ways people relate to options. First, there are the options that each of us has chosen or affirms as our own: our family, our career, our religion etc. Second, there are all the other options that we have not chosen, which we may, or may not, wish to pursue in the future. Let us term the former “attachments” and the latter “possibilities”.

It is relatively straightforward to see that people can have essential interests in accessing attachments that lie beyond an “adequate” range. Consider two examples. First, imagine a person who believes in a religion that is not represented in her own state and wishes to go abroad in order to practice it.¹⁷ What is a proponent of the “adequate” range view to say to this person? “It is sad that you cannot practice your religion here but there are other religions you could choose. Why not pick one of them instead?” For a religious believer other religions are not genuine alternatives since they lack the primary quality the believer finds in her own religion: the quality of being the true religion. Second, consider those separated from friends and family. There may be a range of other people they can form relationships with but they cannot be expected to view these others as adequate alternatives to those they love.

It can be harder to see what essential interests we have in the freedom to access possibilities. That our human freedom rights protect our ability to access

¹⁷ Miller, *National Responsibility and Global Justice*, 207.

possibilities, as well attachments is clear, for otherwise we could not explain the extensive scope of human freedom rights which permit us, amongst other things, to join and establish new civic associations, meet new people and make new friends, learn about, and convert to, new religions and attend meetings on subjects we know little about. But why are our human freedom rights this extensive?

There are at least three points to consider here. First, people have an essential interest in conscience, a value which involves more than simply acting in accordance with one's ethical beliefs but also searching for answers to "ultimate questions": "questions of life and death, the meaning of life, life's ethical foundation and so forth".¹⁸ Because people have this interest they have an interest in the conditions of freedom that make conscience possible. As Martha Nussbaum has argued:

From the respect we have for the person's conscience, the faculty of inquiring and searching, it follows that we ought to respect the space required by any activity that has the general shape of searching for the ultimate meaning of life, except when that search violates the rights of others.¹⁹

When a state removes certain life options from us it narrows and distorts our search for answers to questions of ultimate meaning. Indeed it may do worse than that: it may rob us of the truth. For who is to say that the religions or philosophical doctrines that state restrictions prevent us from accessing are not the true ones or contain an element of the truth?²⁰ Notice moreover that even if, at present, we are not interested in a particular option this does not mean that we will

¹⁸ Martha Craven Nussbaum, *Liberty of Conscience: In Defense of America's Tradition of Religious Equality* (New York, NY: Basic Books, 2008), 168.

¹⁹ Ibid.

²⁰ John Stuart Mill, "On Liberty," in *On Liberty and Other Essays*, ed. John Stuart Mill (Oxford: Oxford University Press, 1998), 22-40.

not be interested in the future. People can become deeply committed to ideas or ways of life that, twenty years previous, they dismissed as nonsense. Finally note that even in regards to options that we are never interested in, the fact that they remain accessible to us can sharpen our understanding and commitment to options that we do pursue.²¹ In short, conscience requires freedom: freedom not merely to choose from an “adequate” range of options or to pursue those options we have chosen, but also the freedom to question and explore options that lie beyond our immediate horizon. In practice this means that we must be permitted to associate freely, to learn from others and express ourselves to others as we choose, to experiment with different ways of living, to study different ethical and religious traditions and, by extension, to travel or settle where conscience – this faculty for searching and inquiring – urges us to go. Restrictions on freedom of association, expression, religion or movement are thus restrictions on conscience whether they are imposed within states or at the borders that lie between them.

Second, besides our interest in conscience we have an essential interest in not having others, and in particular states, determine our options when we make basic personal decisions.²² We have an essential interest, in other words, in what Joseph Raz has called “independence”: a condition of autonomy that is violated if others subject us to their will by coercively narrowing the options available to us.²³ As Raz stresses, coercion infringes independence, and thus autonomy, even if it leaves those subjected to it with an “adequate” range of options.²⁴ Our

²¹ Ibid., 40-51.

²² Something like this sentiment is captured in the US Supreme Courts decision in *Kent vs. Dulles*, p126.): “Travel abroad, like travel within the country ... may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.”

²³ Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), 377-378.

²⁴ Ibid., 377. For a careful exposition of the claim that immigration restrictions are coercive and as such infringe autonomy, see Arash Abizadeh, “Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders,” *Political Theory* 36 (2008): 37-65, 57-60. For

interest in our independence is an interest we have in being awarded certain standing by others, which involves the recognition that it is us, not them, who should get to determine the course of our lives.²⁵ From this perspective, a key purpose of human freedom rights can be seen as dividing off, from the host of issues over which states rightfully yield authority, a subset of matters, basic in each person's life, that the individual should be allowed to determine for herself. These matters include where she lives, who she lives with, who her friends are, which religion she practices, which associations she joins, what work she does and how she spends her free time. When states interfere in these matters, without strong justification, they deny us the recognition we are owed as autonomous persons. Unjustified restrictions, both internal and at the border, trespass on the personal domain.

Third, there is the political interest underlying the conventional human freedom rights. This interest cannot be properly protected simply by awarding people an "adequate" range of life options. If governments are to be held to account in regards to all the geographical areas their policies affect then people need to be able to access all these areas. The freedom to move around Manchester, for instance, is insufficient to enable one to properly investigate the effects of British government policies elsewhere, whether that is in London or Sierra Leone. Moreover, political life is not fully free if people are prevented from meeting, organizing and protesting as they wish. When political activity is constrained, the opinions formed and decisions taken bear the mark, however subtle, of state coercion. If democratic decisions are to represent the genuine view of the

subsequent debate, see David Miller, "Why Immigration Controls Are Not Coercive: A Reply to Arash Abizadeh," *Political Theory* 38 (2010): 111-120; Arash Abizadeh, "Democratic Legitimacy and State Coercion: A Reply to David Miller," *Political Theory* 38 (2010): 121-130.

²⁵ Raz, *The Morality of Freedom*, 378.

electorate rather than the view the electorate arrive at when subjected to state coercion, people must be awarded full political liberty.

To sum up: this section has shown that people do have essential interests in accessing options that lie beyond an “adequate” range. They have essential interests in accessing options to which they are already attached (religions, loved ones) and more generally they have interests in conscience, independence and political liberty that can only be satisfied if states refrain from interfering in their life choices. We should not then reject the conventional view of human freedom rights as protecting the freedom to access the full range of existing life options. However, if we accept this conventional view then we must accept that people have an essential interest in being free to immigrate to other states for otherwise the range of life options they can access is greatly constrained.

IV

Now someone may accept that immigration restrictions frustrate the same set of interests that ground conventional human freedom rights but argue that, in the case of immigration, these interests fail to ground a human right because states have a right to control their borders and thus exclude foreigners if they so wish. This objector would, in effect, be accepting the interest claim underlying the idea of a human right to immigrate, but denying either the duty claim or the interference claim. That is, the objector would be accepting that people have significant interests in the freedom to immigrate (the interest claim), but denying that these interests generate moral duties upon states to uphold the freedom to immigrate (the duty claim) or that the violation of such moral duties could justify interference by external actors (the interference claim). We shall see, in the next

section, that it is actually quite important, when responding to this kind of objection, to know which of the two claims the objector is denying: the duty claim or the interference claim. But leaving that matter aside for now, let us ask what motivates the objection.

Arguments for a state's right to exclude are of two general kinds. Some refer to the supposed importance of allowing a state to choose its own immigration policy. For instance, it has been argued that host state control of immigration policy is an important aspect of sovereignty, democracy or self-determination. Other arguments seek to justify exclusion on instrumental grounds, as a means to prevent certain deleterious effects. It might be argued, for instance, that states must exclude to prevent distributive injustice or a loss of cultural integrity. Let us call the first group of arguments, "control arguments" and the second, "protection arguments".

Control arguments are, in a sense, more ambitious than protection arguments for they seek to defend a state's right to exclude even when immigration to a state does not threaten deleterious consequences. Protection arguments, on the other hand, can only defend a right to exclude under circumstances in which immigration does threaten deleterious consequences. While it is plausible that immigration sometimes has deleterious consequences, it is implausible that it always does. Even when unrestricted immigration to a state would threaten an important value, states can and do admit foreigners selectively to avoid these costs. Thus protection arguments can only justify, what we might call, a "contingent right to exclude", under which states are permitted to exclude in particular circumstances. For reasons I shall come to, a contingent right to exclude can be compatible with a human right to immigrate.

The next section addresses three control arguments: from sovereignty, democracy and self-determination.²⁶ The two sections following that address protection arguments with a special focus on arguments from distributive justice and culture.

V

Control arguments from sovereignty, democracy and self-determination hold that, on account of these values, states are permitted to exclude foreigners from its territory. The argument from sovereignty claims that control of immigration policy is an aspect of state sovereignty.²⁷ The argument from democracy holds that immigration policy must be subject to the democratic control of citizens.²⁸ The argument from self-determination contends that immigration is an important object of self-determination since it is important in shaping a state's character.²⁹

While these arguments are popular in the immigration literature it is often unclear whether those that make them intend to argue that states are morally permitted to exclude foreigners or that states have a right to decide these matters, free from outside interference. In other words, it is unclear whether these arguments are to be interpreted as objections to the duty claim or the interference claim. These two kinds of objections are quite distinct. It is perfectly possible for a state to have a right to decide whether or not to admit foreigners, free from outside interference

²⁶ One important control argument I will not address is the argument from freedom of association made by Christopher H. Wellman, "Immigration and Freedom of Association," *Ethics* 119 (2008): 109-141. For a carefully argued and, in my view, convincing refutation see Sarah Fine, "Freedom of Association is Not the Answer," *Ethics* 120 (2010): 338-356.

²⁷ Alan Dowty, *Closed Borders: The Contemporary Assault on Freedom of Movement* (New Haven: Yale University Press, 1987), 14; Frederick G. Whelan, "Citizenship and Freedom of Movement: An Open Admission Policy?," in *Open Borders? Closed Societies?*, ed. Mark Gibney (New York: Greenwood, 1988), 26.

²⁸ Whelan, "Citizenship and Freedom of Movement: An Open Admission Policy?," 28-29.

²⁹ Miller, *National Responsibility and Global Justice*, 200; Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), 62.

and yet have a moral duty to make its decision in a particular way. The duty claim could be true even if the interference claim were false.³⁰

In fact arguments from sovereignty, democracy and self-determination fail as objections to both the duty claim and the interference claim. They fail as objections to the duty claim on conceptual grounds. Moral duties do not, in themselves, restrict sovereignty, democracy or self-determination. The arguments fail as objections to the interference claim on substantive grounds, for there is no reason to award a state that has violated essential interests of foreigners, a right against interference. Let me develop each of these points in turn.

While theorists have used the term “sovereignty” in many different ways, under any ordinary definition, moral duties do not restrict sovereignty. Surveying the sovereignty literature, Stephen Krasner has distinguished four ways the term is commonly used:

1. “Domestic sovereignty”: “the organization of public authority within a state and ... the level of effective control exercised by those holding authority”.
2. “Interdependence sovereignty”: “the ability of public authorities to control transborder movements”.
3. “International legal sovereignty”: “the mutual recognition of states and other entities”.
4. “Westphalian sovereignty”: “the exclusion of external actors from domestic authority configurations”.³¹

³⁰ It is possible, in other words for a state to have a right to violate its duty. David Enoch, “A Right to Violate One's Duty,” *Law and Philosophy* 21 (2002): 355-384.

³¹ Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton University Press, 1999), 9.

None of these four definitions involves the denial that states have moral duties of any kind and thus, sovereignty, understood in any of these four ways, is not restricted by moral duties to uphold the freedom to immigrate. Take for instance the second definition, interdependence sovereignty. According to this definition, a state has less sovereignty if it cannot control one form of transborder movement, the movement of people into its territory. If a state lacked the ability to exclude immigrants then its interdependence sovereignty would be restricted. But being able to exclude is totally distinct from being morally permitted to exclude. A state is still able to exclude if it has a moral duty to admit: it simply cannot exclude without violating that duty. Similarly take the fourth definition, Westphalian sovereignty. It is plausible to construe the enforcement of a duty to admit by external actors as an infringement of its Westphalian sovereignty. But the mere presence of a duty to admit foreigners does not infringe Westphalian sovereignty in any way.³²

Next consider democracy. As with sovereignty, democracy does not bestow general moral permissions upon states. To argue that a decision should be decided democratically is to argue that the people should decide the matter, not that the people are morally free to decide whatever they wish. It is quite possible for an electorate to have both a right to decide upon a certain matter and a duty to settle it in a particular way. For instance, it may both be the case that health policy should be decided democratically and that the electorate has a duty to vote for free health care for the poor. The control argument from democracy cannot then refute the duty claim. If immigration policy must be decided democratically

³² “That a state has discretion to admit or refuse aliens does not mean that a state can exercise discretion without regard to just principles. ... Thus it is possible to say that a state is sovereign and independent, while also criticizing it for acting unjustly”. Dummett, “The Transnational Migration of People Seen From within a Natural Law Tradition,” 175.

then it must be left to the people to decide whether foreigners are admitted or excluded, but this does not mean that the people have no duty to decide to admit.

Finally consider self-determination. Self-determination does not bestow moral permissions upon states. A state is self-determining if it is politically free to determine its own affairs. That it has a moral duty to determine its affairs in a particular way makes it no less self-determining. Were this not the case, self-determination would end where human rights begin and it would be impossible for self-determining states to violate human rights. Yet as supporters of self-determination themselves maintain, self-determining states can, and often do, violate human rights.³³ Self-determination cannot then bestow a moral permission to exclude foreigners. If a state were to recognize a duty to admit foreigners to its territory it would not thereby be sacrificing its self-determination but rather exercising its self-determination in a certain way.

Sovereignty, democracy and self-determination cannot bestow moral permissions upon states to exclude foreigners. A state that has a moral duty to admit remains sovereign, democratic and self-determining. Arguments from sovereignty, democracy and self-determination cannot then offer an objection to the duty claim, that states have moral duties to uphold the freedom to immigrate. If these arguments are to work as objections to the idea of a human right to immigrate, then they must be targeted against the interference claim, that external actors can permissibly interfere in a state's decision to exclude migrants from its territory.

It is worth recalling at this juncture that 'interference' refers to a range of measures designed to change a state's policies, not merely those that involve

³³ Yael Tamir, *Liberal nationalism* (Princeton, NJ: Princeton University Press, 1993), Studies in moral, political, and legal philosophy, 71; Walzer, *Spheres of Justice: A Defense of Pluralism and Equality*, 266.

compulsion. One measure commonly pursued by governments, international organizations and civil society organizations, is simply to monitor and expose human rights violations as they occur, in the hope of shaming the offending state into changing its policies.³⁴ Another measure is to partner with domestic campaign groups to highlight the causes for which they are fighting. Beyond these milder forms of interference there are various others, which, while more stringent, nevertheless leave an offending state with other options besides compliance. These include boycotts of cultural or sporting events hosted by the offending state, exclusion from an international organization and administering certain kinds of (non-crippling) economic sanctions against the offending state or its leaders.³⁵ Anyone who wishes to deny the interference claim must deny that any of these forms of interference can be a permissible reaction to a state's immigration policy.

Two considerations show that at least some forms interference are permissible against states that impose unjustified immigration restrictions. First, as we have seen, immigration restrictions frustrate the same set of interests that ground conventional human freedom rights. It seems perfectly permissible for external actors to engage in at least some forms of interference in defense of these conventional rights. So for instance, it seems perfectly permissible for governments, international organizations and civil society organizations, to publically criticize a state that violates freedom of movement, speech, association and so forth. Indeed, on accounts of human rights that regard it as part of the very definition of human rights that a right's violation justifies interference by outsiders, conventional human freedom rights would not be human rights unless

³⁴ Beitz, *The Idea of Human Rights*, 33-35.

³⁵ *Ibid.*, 35-38.

they justified some form of interference. If conventional human freedom rights can justify interference by outsiders, and immigration restrictions frustrate the same interests that ground conventional human freedom rights, then interference can also be justified against states that impose unjustified immigration restrictions.

Second, immigration restrictions restrict the liberty of foreigners as well as citizens. This lends foreigners, and the governments that represent them, particular reason to interfere when states impose unjustified immigration restrictions. Indeed, it is already common practice for governments to interfere in the immigration policies of other states in so far as they lobby on behalf of their citizens for freer access (more visas, visas for longer periods etc.) and criticize restrictions they regard as unwarranted. If interference can be justified even while the human right to immigrate goes unrecognized, it can certainly be justified once we acknowledge that essential interests are at stake. Since unjustified immigration restrictions violate the essential interests of outsiders, outsiders are especially entitled to seek their removal.

Control arguments from sovereignty, democracy and self-determination fail as objections to both the duty claim, that states have duties to uphold the freedom to immigrate and the interference claim, that outside interference can be justified against states that violate these duties. The arguments fail as objections to the duty claim since the existence of moral duties do not, in themselves, restrict sovereignty, democracy or self-determination. That the arguments fail as objections to the interference claim is apparent from the fact that states have no right to non-interference when they violate other human freedom rights and

violate the essential interests of foreigners when they impose unjustified immigration restrictions.

VI

Having established that control arguments from sovereignty, democracy and self-determination fail, let us turn to protection arguments: arguments that seek to justify immigration restrictions as a means to protect certain values. There are many protection arguments; immigration has been said to threaten so many different values.³⁶ Two prominent arguments however are those from distributive justice and culture. The argument from distributive justice holds that exclusion can be justified to avoid deepening distributive injustice.³⁷ Unrestricted immigration, it has been claimed, would drive down the wages of the poorest and destroy the social cohesion that sustains support for redistributive policies.³⁸ The argument from culture holds that exclusion can be justified to protect or preserve a host state's culture. Without immigration restrictions, it is held, host state

³⁶ An intuitively powerful protection argument that I will not address here, but have addressed at length elsewhere, holds that immigration restrictions are justified as a means to stem the brain drain of skilled workers from desperately poor countries. See Kieran Oberman, "Can Brain Drain Justify Immigration Restrictions?", *Ethics* 123 (2013): 427-455.

³⁷ One could also make a distributive justice argument

³⁸ George J. Borjas, *Heaven's Door: Immigration Policy and the American Economy* (Princeton, NJ: Princeton University Press, 1999); Matthew J. Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge: Cambridge University Press, 2004), 71-75; David Goodhart, "Too diverse?," *Prospect Magazine* (2004): 30-37; John Isbister, "A Liberal Argument for Border Controls: Reply to Carens," *International Migration Review* 34 (2000): 629-635; Stephen Macedo, "The Moral Dilemma of U.S. Immigration Policy: Open Borders Versus Social Justice?," in *Debating Immigration*, ed. Carol M. Swain (Cambridge: Cambridge University Press, 2007); James Woodward, "Commentary: Liberalism and Migration," in *Free movement: Ethical Issues in the Transnational Migration of People and of Money*, eds. Brian Barry and Robert E. Goodin (University Park, PA: Pennsylvania State University Press, 1992).

cultures would be radically altered, if not entirely superseded, by immigrant cultures.³⁹

The first point to note regarding protection arguments is that they rely on empirical premises that are open to empirical contestation. It is far from clear, for instance, that immigration does drive down the wages of the poorest citizens. An influential study on the effects of the large influx of Cuban immigrants to Miami, following the Mariel boat lift, found it had virtually no impact on wages or employment in the city.⁴⁰ Other studies have arrived at similar results.⁴¹ Nor is it clear that immigration saps support for the welfare state. Canada stands as an example of a country that has sustained both high rates of immigration and high levels of social spending.⁴² Europe too may offer a story of how immigration and welfare can be combined.⁴³ Even, the assumption, underlying most protection arguments, that lifting immigration restrictions would result in a flood of new arrivals, requires closer analysis: a point I shall return to in the next section.

It is not the empirical premises underlying protection arguments that I wish to focus on, however, but the normative conclusion that these costs justify

³⁹ Carens, "Migration and Morality: A Liberal Egalitarian Perspective," 36-40; also see Samuel P. Huntington, *Who Are We?: The Challenges to America's National Identity* (New York: Simon and Schuster, 2004); Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995), 93; David Miller, "Immigration: The Case for Limits," in *Contemporary Debates in Applied Ethics*, eds. Andrew I. Cohen and Christopher Heath Wellman (Oxford: Blackwell, 2005), 199-201; Walzer, *Spheres of Justice: A Defense of Pluralism and Equality*, 39.

⁴⁰ David Card, "The Impact of the Mariel Boatlift on the Miami Labor Market," *Industrial and Labor Relations Review* 43 (1989): 245-257.

⁴¹ Rachel M. Friedberg and Jennifer Hunt, "The Impact of Immigrants on Host Country Wages, Employment and Growth," *The Journal of Economic Perspectives* 9 (1995): 23-44; Marco Manacorda, Alan Manning and Jonathan Wadsworth, "The Impact of Immigration on the Structure of Wages: Theory and Evidence from Britain," *CEPR Discussion Paper* DP7888 (2010).

⁴² Keith G. Banting, "Is There a Progressive's Dilemma in Canada? Immigration, Multiculturalism and the Welfare State," *Canadian Journal of Political Science* 43 (2010): 797-820.

⁴³ Marcus M.L. Crepaz, *Trust Beyond Borders: Immigration, the Welfare State and Identity in the Modern State* (Ann Arbor: University of Michigan Press, 2008).

restrictions. That conclusion is too quick. Even if immigration does carry costs it may nevertheless be morally incumbent upon a state to allow people to enter.

In fact, I will argue, social costs can only justify restrictions under two conditions: the costs are particularly severe and there is no acceptable alternative means to address them. Since social costs can only justify immigration restrictions in this restricted range of circumstances, protection arguments offer no objection to the human right to immigrate, defined as a non-absolute right. It can both be the case that people have a non-absolute human right to immigrate and that sometimes, when severe costs are threatened and there is no acceptable alternative means by which they can be addressed, restrictions can be justified. Outside this restricted range of circumstances, immigration restrictions are unjust.

The logic underlying this approach is that when we trade off the freedom to immigrate against other values we must award it the same weight as other basic freedoms, which are already recognized as human rights, when they face trade-offs against the values that immigration is said to threaten. We should award the freedom to immigrate the same weight as freedom of movement, association, expression, religion, occupational and marital choice, since, as we have seen, the same underlying interests are at stake.

That we award these other freedoms significant weight is clear from the fact that we recognize human rights to their enjoyment. In certain cases these freedoms may justifiably be subject to restriction in order to avoid social costs, but such cases arise only when the threatened costs are particularly severe and there is no acceptable alternative means to avoid them. So, for instance, in the case of freedom of expression, it might be permissible to ban a political protest if it threatened to result in rioting but not to avoid some more minor cost, such as

temporary traffic disruption or offence to opponent groups. Nor would it be permissible to ban the protest if there was an acceptable alternative means to avoid the riot, such as increased policing.

If we award the freedom to immigrate the same weight as these other freedoms then the same two conditions must apply. If we apply these conditions, however, then a number of justifications for exclusion fail, either because the supposed costs they refer to are not sufficiently severe or because there are better alternative means by which the costs may be addressed. Let me develop each of these points in turn.

To see why many of the supposed costs of immigration do not provide sufficient reason to exclude, take the example of distributive justice. Some of the theorists that make the distributive argument suggest that exclusion can be justified not only when immigration threatens to deprive poor citizens of basic goods such as food and shelter but also when it threatens to harm the interests of those citizens who have enough to satisfy their basic needs but remain poor relative to their richer compatriots.⁴⁴ In other words these theorists claim exclusion can be justified not only for the sake of minimal sufficiency but also distributive equality.

This point is important for while exclusion might be justified if immigration threatens to push citizens below some minimal sufficiency threshold, it cannot be justified in order to better realize more ambitious distributive ideals. If we consider comparable trade-offs between distributive justice and other important freedoms, we find that we are unwilling to make any incursions into these freedoms for the sake of further gains in distributive justice once people's basic

⁴⁴ Isbister, "A Liberal Argument for Border Controls: Reply to Carens," 363; Woodward, "Commentary: Liberalism and Migration,".

needs have been fulfilled. Right-wing literature may undermine support for the liberal conception of distributive justice, but this provides no justification for banning its publication. Freedom of marital choice allows wealthy people to marry each other if they so choose (and they often do choose), frustrating one means by which poor people can better themselves, but this provides no justification for interfering in people's choice of who they marry.⁴⁵ Freedom of occupational choice allows talented people to threaten to refuse to do socially productive labor unless they are paid at rates far above those earned by less talented people, yet even GA Cohen, who has done much to raise this issue as a source of distributive injustice, argues that we should pay the talented more than what they are entitled to rather than infringe on their freedom of occupational choice.⁴⁶ Finally, freedom of movement within a state can undermine distributive justice by overwhelming local welfare programs with new applicants, but barring extreme cases (when basic needs are under threat) distributive justice cannot justify internal restrictions; such is the importance of internal freedom of movement.⁴⁷

Next consider the argument from culture. Once again, we need to distinguish here between different levels of impact. If immigration were to threaten to destroy a host state's culture or a crucial element of its culture, such as its language, then restrictions might well be justified. Indeed, restrictions seem equally justified at the domestic level when minority cultures come under threat: thus there is strong case to think native communities in North America can exclude outsiders given the vulnerability of their cultures. Sometimes, however, theorists making a

⁴⁵ Wellman, "Immigration and Freedom of Association," 26.

⁴⁶ G.A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), 181-222.

⁴⁷ Joseph H. Carens, "Immigration and the Welfare State," in *Democracy and the Welfare State*, ed. Amy Gutmann (Princeton, NJ: Princeton University Press, 1988).

culture-based argument go further, arguing that exclusion can be justified simply to prevent a culture from undergoing an important change. For instance, Joseph Carens has suggested that Japan might be permitted to exclude to prevent it from becoming a multicultural state.⁴⁸ To restrict immigration merely to avoid cultural shift of this sort would be an unacceptable restriction on the freedom to immigrate.

Again it is useful to consider analogous trade-offs with related freedoms. Take freedom of expression. By expressing themselves freely and absorbing new ideas, people produce profound cultural shifts. Think of the changes in social attitudes towards sex or the place of women in society that has occurred in last fifty years. Or consider how cultures have been transformed by innovations in art, music and entertainment. Such changes have been a shock to many and there have been some who have wanted to use the power of the state to stop these changes from occurring. Yet states cannot restrict free expression to prevent profound cultural shifts of this sort. People have a right to freedom of expression and this right cannot be overridden so easily.

Indeed, note that it is because immigrants tend to exercise their rights to freedom of expression that they are capable of producing such profound effects upon a host state's culture. Were immigrants to keep publicly silent, expressing themselves freely only behind closed doors, their impact would be much diminished. It is because immigrants play their music in public, establish restaurants, open shops, set up radio stations, produce newspapers and above all, interact with the citizens of the host state, that they tend to have a large cultural impact. The truth is that immigration restrictions are only as effective as they are in preventing shifts in

⁴⁸ Carens, "Migration and Morality: A Liberal Egalitarian Perspective," 37.

culture because they allow states to do indirectly what human rights law prevents them from doing directly, namely, denying people opportunities for free expression.

Finally, consider the right to freedom of movement within a state. Western states tend to be culturally diverse but there are areas within even the most diverse states in which the population is as homogenous as Japan's. Think for instance of those rural areas in the US or Canada where immigrants rarely venture. Sometimes in boom times such areas become attractive to immigrant populations in a way they were not before. An influx occurs and the area begins to assume a multicultural character. While locals continue to practice their own way of life they must rub shoulders with people who do not. Sometimes local people, upset by these changes, will demand that their authorities take action to prevent more immigrants moving in. Nevertheless, in such cases, restrictions on internal freedom of movement cannot be justified. The human right to internal freedom of movement must be respected even when local areas are subject to profound cultural shifts of this sort.

So far we have been considering cases in which immigration necessarily threatens a cost to some other value (e.g. distributive justice, culture). I have argued that even when a trade-off is unavoidable we should not resolve it against the freedom to enter, except perhaps in extreme situations. My second point however is that often a trade-off is avoidable, for there are steps a state can take to avoid the costs in question without restricting immigration. The second condition for justified exclusion thus often goes unmet. Consider distributive justice. When immigration threatens to overload welfare programs or lower wages for poor workers the state has more than two options: doing nothing and excluding

foreigners. Another option would be to raise taxes, either on richer citizens or the migrants themselves (or both) and use the money raised to fund the welfare programs and boost the income for the poorest citizens. Indeed if, as many economists argue, increased migration produces massive efficiency gains, then it might seem possible to fund these measures using income that would not otherwise be raised.⁴⁹ Immigration could, in this sense, pay for itself.⁵⁰

Similarly if immigration threatens a state's culture, the state can adopt other means to protect it, by, for instance, encouraging immigrants to integrate into the host state's culture. How much integration a state can demand and what measures it can take in this regard are both controversial matters but I think it is acceptable for a state to expect resident foreigners to learn the native language and encourage them to do so by refusing to provide translation for non-essential services especially if at the same time it provides subsidized language classes.⁵¹

Finally, one policy that states can adopt in order to limit any cost that immigration imposes is encouraging foreigners to stay in their home state voluntarily by creating greater economic opportunities for them there: a point I shall return to in the next section. To conclude this section: the freedom to immigrate must be given the same weight, when traded-off against other values, as related freedoms which are already recognized as human rights. For this reason exclusion can only

⁴⁹ Dani Rodrik, "Final Remarks," in *Immigration Policy and the Welfare System*, eds. Tito Boeri, Gordon Hanson and Barry McCormick (Oxford: Oxford University Press, 2002), 314; Alan L. Winters, et al., "Liberalising Temporary Movement of Natural Persons: An Agenda for the Development Round," *The World Economy* 26 (2003): 1137-1161.

⁵⁰ Howard F. Chang, "The Disadvantages of Immigration Restriction as a Policy to Improve Income Distribution," *SMU Law Review* 61 (2008): 23-46, 31-33. It might be objected that, in a democracy, the government may be unable to raise taxes because of resistance from voters. But all this shows is that voters are capable of acting unjustly. Recall the argument set out above: the fact that a decision is made democratically does not mean that those making it are relieved of moral duties.

⁵¹ Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, 95-100; David Miller, *On Nationality* (Oxford: Clarendon Press, 1995), Oxford political theory, 385.

be justified when the costs of admitting foreigners are particularly severe and there is no acceptable alternative means to avoid these costs. Because of these conditions exclusion cannot be justified as easily as other theorists have claimed. The right states have to exclude is a narrow one and as such is compatible with a human right to immigrate, understood as a non-absolute right.

VII

In this section, I wish to consider one last objection to the idea of a human right to immigrate. I have argued that the freedom to enter cannot be easily overridden, but I have also held out the possibility that it can be overridden when the costs of immigration are particularly severe. The objection I now wish to consider is that there cannot be a human right to immigrate for even if we accept only a narrow set of justifications for exclusion, rich states would still be justified in excluding a large proportion of the world's population from their territory. If immigration restrictions were lifted, it might be argued, vast numbers of people would want to move from poor states to rich, far more than rich states can accommodate. Human rights are supposed to entail duties. If a human right to immigrate would entail no duty upon rich states to admit most people that wish to enter, how can it be a genuine right?

The first point to make regarding this objection is that it is a controversial question how many people would move if they were free to do so. Admittedly there is evidence suggesting large numbers would move. A survey carried out in Mexico by Robert Suro of the Pew Hispanic Centre found that four in ten

Mexicans said they would migrate to the US if given the opportunity to do so.⁵² Sometimes when immigration restrictions are lifted large numbers move: the UK Home Office estimates that 600,000 people entered the UK from the European accession states, between May 2004 and June 2006.⁵³ On the other hand people do not always move when they have an economic incentive to do so. Migration within the EU has historically been low despite sizeable wage inequalities between states.⁵⁴ Moreover even when large numbers do migrate, they might return soon after, as many of those that came to the UK after accession have since done.⁵⁵

Let us suppose, however, that the empirical premise is true: only a small proportion of those that would want to move to rich states could actually be accommodated. Even then the objection fails, for the idea of a human right to immigrate remains meaningful even if it were true that a large proportion of the world's population could justifiably be excluded from rich states. The idea would remain meaningful since the human right to immigrate entails other duties than the duty to admit and these other duties could be fulfilled even when the duty to admit could not. As Jeremy Waldron notes, it is mistake to think that rights correspond to duties in a one-to-one fashion. Rather rights generate a series of duties, including "background duties" that help to secure the right. David Miller, who supports this view, expresses it as follows: "in cases where because of scarcity we cannot meet our direct obligation to protect A's right, we can still act

⁵² Robert Suro, *Attitudes Towards Immigrants and Immigration Policy: Surveys Among Latinos in the US and Mexico* (Washington, DC: Pew Hispanic Centre, 2005), 13.

⁵³ BBC News, "'Nearly 600,000' New EU Migrants," August 22 2006. Available at: http://news.bbc.co.uk/1/hi/uk_politics/5273356.stm (Accessed: November 27 2010).

⁵⁴ Robert J. Flanagan, "European Wage Equalization Since the Treaty of Rome," in *Labor and an Integrated Europe*, eds. Lloyd Ulman, Barry Eichengreen and William T. Dickens (Washington, DC: The Brookings Institute, 1993).

⁵⁵ Naomi Pollard, Maria Latorre and Dhananjayan Sriskandarajah, *Floodgates or Turnstiles?: Post-EU Enlargement Migration Flows to (and from) the UK* (London: Institute for Public Policy Research, 2008), 5.

on background duties that make it more likely that that right will be fulfilled in time”.⁵⁶ Thus if there is a shortage of medical resources (say), we may have no duty, at the present moment, to attend to everyone’s needs, but we may still have duties to raise production of medical resources, train more doctors or launch an inquiry into the state of health services. In this way, an “individual’s right does not simply disappear from view once it has been traded off against the rights of others” but “remains in the picture and must be taken seriously as residual source of other duties and obligations”.⁵⁷

In the case of the right to immigrate the relevant background duties are duties to implement policies that reduce the costs of lifting immigration restrictions. Perhaps the most important policy of this sort is the creation of greater economic opportunities in poor states to reduce demand for admittance to rich states. If poor states made much needed reforms, such as tackling corruption and if rich states provided fairer terms of trade, cancelled debts and gave more (and better targeted) foreign aid, then over time, migratory pressure may be reduced to levels at which it is safe for rich states to open their borders. In making this claim I draw no simple equation between poverty and migration. The empirical evidence points to a “hump-shaped” relationship: better-off, poor states produce *more* migrants than the poorest states. Were more done to tackle poverty, then, in the short term at least, migratory pressure may actually increase. Nevertheless in the longer term development should reduce migratory pressure.⁵⁸ The European Union provides evidence of this. The history of free movement within the EU

⁵⁶ Miller, *National Responsibility and Global Justice*, 194.

⁵⁷ Jeremy Waldron, “Rights in Conflict,” *Ethics* 99 (1989): 503-519, 512.

⁵⁸ Rogers Brubaker, “International Migration: A Challenge for Humanity,” *International Migration Review* 25 (1991): 946-957, 949; Timothy J. Hatton and Jeffrey G. Williamson, “What Fundamentals Drive World Migration?,” in *Poverty, International Migration and Asylum*, eds. George J. Borjas and Jeff Crisp (London: Palgrave Macmillan, 2005), 18.

has, on the whole, been a history of low migration despite the persistence of sizeable wage inequalities between member states. Two factors seem relevant in explaining low EU internal migration. First, the fact that the poorer member states such as Spain and Ireland experienced sizable development.⁵⁹ This development came partly because the EU did more than simply lift immigration restrictions, it has also offered its members aid and free trade.⁶⁰ Second, quite simply, people generally seem reluctant to migrate. As Joseph Carens notes when he considers the EU case:

Some people love novelty and adventure, but most people are not keen to leave home, family and friends and to move to a place where they don't speak the language and don't know their way about. Most consider doing this only when they think they have a lot to gain.⁶¹

In this section I have argued that the right to immigrate entails background duties to create the circumstances under which exclusion is unnecessary. This point relates closely to the point made in the previous section that states have a duty to avoid conflicts between the freedom to immigrate and other values. There I argued that *before* a state trades-off the freedom to immigrate for other values they have a duty to try to avoid the necessity of making such a trade-off in the first place. Here I am arguing that even *after* a state has traded-off the freedom to immigrate for other values it still has a duty to undertake policies that, in time, will allow it to recreate a situation in which such a trade-off is unnecessary.

⁵⁹ Flanagan, "European Wage Equalization Since the Treaty of Rome," 184.

⁶⁰ Richard E. Baldwin and Charles Wyplosz, *The Economics of European Integration* (London: McGraw-Hill, 2006), 166-169; Antoni Castells and Marta Espasa, "Do Structural Actions Contribute to Reduced Regional Disparities in the European Union?," in *European Integration, Regional Policy, and Growth*, eds. Bernard Funck and Lodovico Pizzati (Washington, DC: World Bank, 2003).

⁶¹ Joseph Carens, "Open Borders and the Claims of Community," APSA Annual Meeting Paper, (2010), 13.

VIII

This article has shown that people have a human right to immigrate based on their interest in making important personal decisions and engaging in politics, free from state restrictions on the range of options available to them. States have no general right to exclude and while they may have a contingent right to exclude when the costs of immigration are particularly severe, such a right is compatible with the idea of a human right to immigrate.

While immigration restrictions might be justified if necessary to avoid severe costs, outside these special circumstances they constitute a violation of our human rights. Since even the most progressive states restrict immigration and since it is implausible that all the restrictions they impose are necessary to avoid severe costs, we must conclude that even the most progressive states violate the human right to immigrate. The fact that the human right to international freedom of movement is so frequently violated should not however make us any more tolerant of its violation. When states prevent us from going where we want to go, associating with whom we wish or speaking our minds to those that care to hear our thoughts, the appropriate reaction is one of indignation. It does not matter whether states prevent us from doing these things by fining us, imprisoning us, deporting us or denying us entry: indignation is the appropriate response since states have no right to interfere in our lives in these ways. Once we recognize and condemn unjustified immigration restrictions as the human rights violations they constitute, we take the first step in the long process of achieving their removal.